

COMPLIANCE BOARD OPINION NO. 96-10

October 23, 1996

Rev. Dr. Lawrence D. Jameson

The Open Meetings Compliance Board has considered your complaint dated August 7, 1996 alleging that a violation of the Open Meetings Act occurred at two meetings of the Mayor and Town Commissioners of Elkton on August 5 and 7, 1996. The gist of your complaint is that the meetings were not open to the public or advertised in any way. For the reasons stated below, the Compliance Board finds a violation on August 5 but not on August 7.

I

Complaint

Your complaint alleges that on August 5, the Mayor and Town Commissioners met with representatives of Casino America, the would-be developer of casino complex on land within the zoning power of the Town of Elkton. "As far as I can determine," your complaint continues, this August 5 meeting "was not open to the public or advertised in any way. The *Cecil Whig* reported on this meeting three days after the fact."

Your account of the August 7 meeting states that "Casino America held another meeting (this one was attended by approximately 200 persons) at Schaefer's Canal House in Chesapeake City, MD. The *Cecil Whig* reported on the meeting in advance, but it was clear that this meeting was not open to the public. The meeting was by invitation only." An article in the August 2, 1996 *Cecil Whig* reported that "the company had mailed invitations to the press and officials at the state, county and local levels asking them to attend a reception at Schaefer's Canal House next Wednesday evening, where it says it will unveil the proposed project."

II

Elkton's Response

In a timely response on behalf of the Mayor and Commissioners, Mr. Lewis George, Jr., the Town Administrator, explained that the August 5 meeting, held at Casino America's request, "was not ... convene[d] for the purposes of conducting public business, nor was it intended to exclude any citizen, group or opposing viewpoint." Indeed, Mr. George suggests that the

meeting was in fact open, albeit not advertised:

The meeting was held in the Elkton Municipal Meeting Room. The front doors to the Municipal Building were unlocked and the meeting was accessible to the public. In fact, a citizen member of the Elkton Downtown Revitalization Committee attended to listen to Casino America's presentation. Due to the relatively short notice, the gathering was not advertised by the Town of Elkton.

As for the August 7 event, Mr. George denied that it was a meeting of the Mayor and Commissioners: "Casino America invited the Mayor and Commissioners, members of other local area governments, business and private citizens, as guests, to listen to their [casino project] promotion at Schaefer's Canal House, Chesapeake City, Maryland."

III

Analysis

A. August 5 Meeting

The Open Meetings Act defines a "meeting" as the convening of a quorum of a public body "for the consideration or transaction of public business." §10-502(g) of the State Government Article. In the Board's view, the imparting of information about a matter, even if unaccompanied by any discussion among the members of the public body, constitutes "the consideration or transaction of public business" with respect to that matter. As the Attorney General has advised, "even preliminary stages of the decisionmaking process are encompassed by the Act." Office of the Attorney General, *Open Meetings Act Manual* 7 (1995). A briefing is an important part of the process by which policy is made. Compliance Board Opinion 93-6 (May 18, 1993).

According to the Town of Elkton's response, the Mayor and Town Commissioners agreed to hold the meeting on August 5. The purpose of the meeting was for Casino America to present its plans and to clarify any questions by the Mayor and Commissioners regarding the gambling facility. By receiving this briefing and asking questions, the public body was "considering public business." Thus, the August 5 session held by the Mayor and Commissioners was a "meeting," and the Open Meetings Act applied to it.

Because the August 5 session was a "meeting," the Act required that the public be given reasonable advance notice of the meeting. §10-506. Mr. George's letter indicates that, due to the relatively short interval between

Casino America's request and the meeting, public notice was not given.

The prompt scheduling of the meeting does not justify the failure to provide notice. The Compliance Board recognizes that sometimes meetings must be held on short notice. Nevertheless, "[i]mpromptu meeting or not, the Act's procedures must be followed" Compliance Board Opinion 93-1 (January 7, 1993). As the Attorney General points out, "If events require the prompt convening of a previously unscheduled meeting, the public body should provide immediate oral notice to reporters who are reasonably thought to be interested and a written notice should be posted in the customary public place as quickly as possible." *Open Meetings Act Manual* 13. Hence, the Act was violated when the Town of Elkton did not follow the required procedures for notice of the August 5, 1996 meeting.

B. August 7 Meeting

Casino America invited the Mayor and Town Commissioners, other government officials, and various private citizens to the August 7 meeting at a restaurant in Chesapeake City. Unlike the August 5 meeting, this one was under the auspices of the private company, not the Mayor and Commissioners.

The Open Meetings Act only applies to meetings of a "public body," and Casino America is not a "public body." §§10-502(h) and 10-505. Moreover, members of a public body do not violate the Open Meetings Act merely by attending a meeting of an entity that is not itself subject to the Open Meetings Act, even if the topic of the meeting relates directly to a matter before the public body. *Ajamian v. Montgomery County*, 99 Md. App. 665, 639 A.2d 157 (1994). The Act applies only if the public body itself separately conducts public business, as distinct from the proceedings of the larger group. If interaction among the members of the public body does not occur, and the large group is not a mere subterfuge to evade the law, no violation occurs. *Id.* See also Compliance Board Opinions 95-4 and 92-2 (October 23, 1992).

The Compliance Board has no evidence that the Mayor and Town Commissioners engaged in any separate conduct of public business at Casino America's August 7 meeting. Therefore, in the opinion of the Compliance Board, no violation then occurred.

OPEN MEETINGS COMPLIANCE BOARD

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